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In The
Supreme Court of the United States

OCTOBER TERM, 1981

No.

IRWIN WASSERMAN, et al.,
Petitioners,

v.

SYLVIA WASSERMAN,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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IN THE SUPREME COURT

OF THE UNITED STATES

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v.

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PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Petitioners respectfully pray that a Writ of Certiorari be issued to review the opinion and judgment of the United States Court of Appeals for the Fourth Circuit.[1]

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[1]The parties to the proceeding before the Fourth Circuit were Sylvia Wasserman, Appellant, and Irwin Wasserman, Arlene Cornblatt Wasserman, Jacob Wasserman, Helen Ann Wasserman, Irwin Liptz, Armand Robinson, Murray Kivitz, and the partnership of Kivitz, Robinson & Liptz, Appellees.

QUESTION PRESENTED

Did the Court of Appeals err in holding that a federal court had jurisdiction to resolve a case alleging liability for child enticement, intentional infliction of emotional distress and conspiracy to remove, etc., where the claims arise from a domestic relations dispute and where federal courts have traditionally excluded such conflicts from diversity jurisdiction?

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OPINIONS BELOW

The opinion of the Fourth Circuit Court of Appeals in this case appears at 671 F.2d 837 (1982). The memorandum opinion of the District Court for the District of Maryland appears at page A-1 of the Appendix to this Petition for a Writ of Certiorari.

JURISDICTION

The judgment of the Fourth Circuit Court of Appeals was entered on February 24, 1982. This petition for certiorari was filed within 90 days of that date. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254.

STATEMENT OF THE CASE

On July 30, 1980, Sylvia Wasserman filed an action in the United States District Court for the District of Maryland seeking compensatory and punitive damages against Irwin Wasserman, her former husband,

and against his present wife, both his parents, his three attorneys and the law firm representing him in the Wassermans' divorce and child custody proceedings for the alleged wrongful removal of three of the four Wasserman children from her custody. Her three count complaint alleged child enticement, intentional infliction of emotional distress, and civil conspiracy to remove the children from her and interfere with her relationship with them. Mrs. Wasserman asserted federal diversity jurisdiction based on her California citizenship and the Maryland citizenship of all the defendants.

The jugular facts of this case where the husband took the children were litigated in the state court prior to this action. The father was incarcerated, fined, and had his future visitation rights subjected to a new exeat bond.

The facts on which Mrs. Wasserman bases her child enticement, infliction of emotional distress, and conspiracy counts are those relating to these alleged violations of the child custody order of the state court when the husband took the children from Maryland to California. There were two years of litigation in the state court. The matters were fully litigated between the parents, decisions were entered by the state court, and the litigation was completed and finished. Now the plaintiff attempts to bring the identical problem to the Federal Court. There are no new facts that were not considered by the state court. The only new element is that the husband's second wife, the husband's parents, and the husband's attorneys are now added as co-defendants.

All defendants filed Motions to Dismiss asserting lack of subject matter

jurisdiction because the child custody dispute at the heart of each of the counts in the complaint brought all the issues raised within the domestic relations exception to federal diversity jurisdiction. These motions were granted after hearing by memcrandum order on May 12, 1981, the judge finding the counts, though alleging intentional torts, to be fundamentally a domestic squabble over child custody and parent-child relations.

Mrs. Wasserman filed an appeal from this decision to grant the motions to dismiss in the Fourth Circuit Court of Appeals. The Fourth Circuit reversed the lower court's decision on February 24, 1982. It is from this decision that this appeal is taken by petitioners Irwin Wasserman, Arlene C. Wasserman, Jacob Wasserman, and Helen Ann Wasserman.

REASONS FOR GRANTING THE WRIT

1. Inconsistency in Circuit Court decisions. The decision below creates a direct conflict with the prior decisions of this court and the decisions of four other Circuit Courts of Appeals on the same matter of law relating to the exemption of domestic relations issues including custody disputes from federal diversity jurisdiction. The varying decisions of another Circuit Court reflect an internal conflict. This nationwide conflict and confusion among and within circuits can only be reconciled by this Court.

The question whether federal diversity jurisdiction may lie in cases dealing with child custody disputes and domestic relations issues has been previously considered by this Court in In re Burrus, 136 U.S. 586 (1890) and Barber v. Barber, 62 U.S. (21 How.) 582 (1858). This Court held

that there is no federal jurisdiction over such issues.

The First, Third, Sixth, and Eighth Circuits have all subsequently considered this question and have held that there can be no federal jurisdiction in diversity cases involving domestic relations and child custody disputes. See Sutter v. Pitts, 639 F.2d 842 (1st Cir. 1981) (a complaint of civil rights violation based on disobeying a custody order); Solomon v. Solomon, 516 F.2d 1018 (3rd Cir. 1975) (a complaint of breach of contract under a separation agreement involving custody); Gargallo v. Gargallo, 487 F.2d 914 (6th Cir. 1973), appeal dismissed, 414 U.S. 805 (1973) (a suit for perjury, conversion, and malicious prosecution in a divorce proceeding); Overman v. United States, 563 F.2d 1287 (8th Cir. 1977) (an injunction to garnish wages for alimony and child support).

The Fifth Circuit has considered in two cases whether to find jurisdiction over such matters and has held differently in each. In the first, Crouch v. Crouch, 566 F.2d 486 (5th Cir. 1978) federal jurisdiction was upheld in a breach of contract of a voluntary separation agreement. In Jagiella v. Jagiella, 647 F.2d 565 (5th Cir. 1981), federal jurisdiction was denied in a suit for support arrearages, mental anguish, alienation of affection and visitation.

2. An important legal question. The decision below usurps from the states one area of law historically under exclusive state jurisdiction, that relating to family disputes. As a result, the decision below is in direct conflict with this Court's increased deference to state administration, adjudication, and jurisdiction.

Areas of judicial consideration to which this Court has recently given the states preemptive jurisdiction include state institutional reform, Pennhurst State School v. Halderman, 101 S.Ct 1531 (1981); civil attachment proceedings, Trainor v. Hernandez, 431 U.S. 434 (1977); title to land changed by navigable rivers, Oregon v. Corvallis Sand & Gravel Co, 429 U.S. 363 (1977); habeas corpus relief, Stone v. Powell, 428 U.S. 465 (1976); injunctions against state officials, Rizzo v. Goode, 423 U.S. 362 (1976); and state agency administrative decisions, National League of Cities v. Usery, 426 U.S. 833 (1976).

Some matters previously preempted by federal jurisdiction have by recent decisions been deferred to the states by this Court such as intellectual property, Zacchini v. Scripps-Howard Broadcasting Co., 433 U.S. 562 (1977);

employment regarding illegal aliens, De Camas v. Bria, 424 U.S. 35 (1976); and anti-pollution regulations, Askew v. American Waterways Operators, Inc., 411 U.S. 325 (1973).

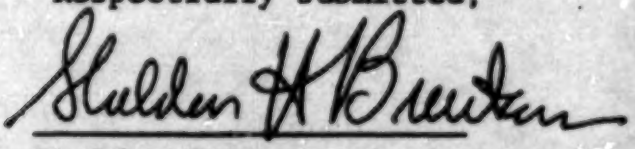
For a more comprehensive list of this Court's decisions to give deference to state jurisdiction in a wide variety of subjects, see Weinberg, "New Judicial Federalism", 29 STANFORD L. REV. 1191, 1193 n.10 (1977); and Gibbons, "Our Federalism", 12 SUFFOLK U.L. REV. 1087, 1113 (1978).

The decision below, instead of fostering a deference to the states, effectively eliminates state jurisdiction over an area traditionally governed exclusively by state law. The conflict this restriction of state jurisdiction causes with this Court's decision to augment state court jurisdiction should be conclusively determined.

CONCLUSION

For the foregoing reasons, the Writ of Certiorari should be granted and the judgment of the United States Court of Appeals for the Fourth Circuit reversed.

Respectfully submitted,



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